

1 articulated it, on those grounds I would strike this. It is
2 -- It's going to become very difficult to make an analysis of
3 the findings as well as the finding itself. Very difficult to
4 -- these distinctions and pointing out that while this is
5 outside the renewal period and prior to it, it really has some
6 meaning here because of this continuation argument that may or
7 may not be made.

8 It's, it's based on really -- The relevance is
9 really based on some speculative suppositions. And as I
10 earlier today articulated what the, what the real, real
11 evidence is in this case that has to be analyzed, I don't see
12 where this evidence -- is going to add to that. So these are
13 paragraphs 12 through 18, are being stricken. That brings us
14 up to paragraph 19.

15 MS. SCHMELTZER: Okay. In paragraph 19, at the end
16 of the first sentence there's a clause, "in a wide range of
17 areas." I, I would move to strike that. We're only concerned
18 here about the programming area. We haven't been provided
19 with the company's policies and practices in other areas, and
20 I think that's vague. And I would also move to strike the
21 last sentence since it refers back to the section you've just
22 stricken.

23 JUDGE SIPPEL: Well, what -- It's suppose to discuss
24 what was stricken. He learned about the company's policies
25 through discussions with Scripps Howard's corporate

1 management. It seems to me he'd be entitled to say that just
2 again from the competence standpoint that --

3 MS. SCHMELTZER: Okay, if we could just strike
4 "discussed above" then.

5 JUDGE SIPPEL: Let's start with that.

6 MS. SCHMELTZER: And "in a wide range of areas."

7 JUDGE SIPPEL: "In a wide range of areas" is really
8 your concern and -- If that was an answer to an interrogatory,
9 of course -- area. What is, what is the Bureau's view on
10 this, Mr. Goldstein or Mr. Zauner?

11 MR. ZAUNER: Your Honor, I would -- I don't think
12 there's any harm done by saying "in a wide range of areas."
13 He's -- It just amplifies policies and practices. Or on the
14 other hand, I wouldn't care if you struck it and just left
15 "describing the company's policies and practices." I think
16 this is a lot of ado about nothing.

17 JUDGE SIPPEL: All right. Mr. Howard?

18 MR. HOWARD: I would, I would support leaving it,
19 Your Honor.

20 JUDGE SIPPEL: I'm going to, I'm going to just
21 strike out "in a wide range of areas" and we'll go to 20.

22 MS. SCHMELTZER: I'm going to go now to page 8, the
23 top of page 8.

24 JUDGE SIPPEL: Okay.

25 MS. SCHMELTZER: I would object to the first

1 sentence, "I assessed every program offered on the station
2 from the new context that the station had changed ownership."
3 This is, this is an incredibly vague statement.

4 JUDGE SIPPEL: Mr. Howard?

5 MR. HOWARD: It can be explored at cross examination
6 and I disagree that it's vague. It's quite precise.

7 JUDGE SIPPEL: Well, what you're really trying -- As
8 I see what you're really trying to get here is after the May
9 -- after May 30, '91, that's when you began to start doing --

10 MR. HOWARD: Oh, yes, Your Honor. The purpose of
11 the testimony, Your Honor, is to, to show that the station's
12 programming is not fixed at some time prior to Scripps Howard
13 acquiring the property and then just left in place. It was an
14 ongoing process.

15 JUDGE SIPPEL: Well, again, that just brings us
16 right back to where we were in terms of having that -- The
17 problem of having to distinguish that -- The point being that
18 your, your programming was going to be, was going to be
19 assessed merit or demerit on the programming as of the time
20 that you took control of the station.

21 MR. HOWARD: That, that's all it says, though, I
22 think, Your Honor. "I assessed every program offered on the
23 station" and that there was a change that had occurred and he
24 took it into account that there was -- that it was Scripps
25 Howard's ownership now.

1 JUDGE SIPPEL: What we're really hearing here,
2 Ms. Schmeltzer is that there are certain things that they
3 didn't change. They just kept it the way it was.

4 MS. SCHMELTZER: Um-hum.

5 JUDGE SIPPEL: Well, what's the problem with that?

6 MS. SCHMELTZER: Well, my, my only concern with the
7 question was that it was very vague, but I'll be happy to
8 cross examine on it.

9 JUDGE SIPPEL: I'll overrule the objection on 20.
10 Paragraph 21?

11 MS. SCHMELTZER: Okay, paragraph 21, the first
12 sentence says that the most significant change was the result
13 of the station's new ability to take advantage of the
14 financial resources. My concern about this is this is very
15 conclusory. There is no, no way of showing that Gillett could
16 not have made those changes but Gillett decided to sell the
17 station. So I think just saying that the station did this
18 because of the financial resources is a conclusory argument
19 and, and it's impossible to cross examine on that.

20 JUDGE SIPPEL: Mr. Howard?

21 MR. HOWARD: I don't understand that, that argument.
22 It's, it's a statement of fact, Your Honor, that Arnold
23 Kleiner -- Arnie's personal knowledge.

24 JUDGE SIPPEL: Well, I'm going to, I'm going to let
25 that testimony stay the way it is and I'd rule that objection.

1 What's your -- What about this, this reference at the bottom
2 of the paragraph, however, to Emily Barr and her Attachment B?

3 MS. SCHMELTZER: Yeah, I was going to get to that,
4 but I have just a few things prior to that.

5 JUDGE SIPPEL: All right.

6 MS. SCHMELTZER: In the next sentence, "After May
7 30, 1991," I would move to strike "promptly" because the facts
8 will show what they show, but "promptly" is a conclusory term.

9 JUDGE SIPPEL: Well, he can either support it or --
10 I mean, he's either going to be credible or not on that, but
11 I, I'm -- we really do have a very short time frame that we're
12 assessing the renewal credit here.

13 MS. SCHMELTZER: Okay.

14 JUDGE SIPPEL: So I'm going to, I'm going to let
15 that stay the way it is.

16 MS. SCHMELTZER: And at the -- just a little bit
17 further down I would move to strike "planned with and approved
18 by Scripps Howard's corporate management during the renewal
19 period," because apparently the, the changes were not actually
20 made until September 16th, 1991.

21 JUDGE SIPPEL: September 16th. But it says it was
22 accomplished during the license term, which would bring it
23 within the -- my carry-out ruling earlier on, that which would
24 be done before the 3rd of September but was carried out
25 through -- which would make -- Well, I'll let you cross

1 examine on that, but I'm going to leave it the way it is.

2 MS. SCHMELTZER: All right. And then the last -- I
3 do have an objection to that last sentence about Emily Barr
4 collecting materials and she's offered them as Attachment B to
5 her testimony. I mean, if she's going to be testifying to
6 that, I don't know why we need it in his testimony.

7 JUDGE SIPPEL: Mr. Howard?

8 MR. HOWARD: Your Honor, we were -- Certainly, Arnie
9 Kleiner will be able to, to add additional information, and
10 it's very important to us that he be -- have the -- have a
11 reference to that exhibit. And, in fact, if for any reason
12 Emily Barr's support of that exhibit should fail, we would ask
13 that his testimony be reformulated to make him the sponsor of
14 it due to his personal knowledge of it. But as to avoid
15 overburdening the, the record with, with exhibits, we just
16 select -- we chose to have the, the principal burden of having
17 the sponsoring exhibits fall with, with Ms. Barr who's still
18 an employee of the station, with Mr. Kleiner, where
19 appropriate, having additional information to offer there to,
20 to support it as well.

21 To the extent that that might be subject to a
22 duplicative argument, I think that the circumstances of
23 Mr. Kleiner's no longer being an employee of the station, the,
24 the questions about his responsibilities and his new position
25 and his availability for the trial would support giving us

1 some leeway in that regard.

2 JUDGE SIPPEL: Well, you're contemplating the
3 possibility that Emily Barr will not be able to qualify --

4 MR. HOWARD: I just -- I don't think that's --
5 that'll happen, Your Honor, but the -- it's, it's -- statement
6 about Mr. Schroeder's reference to one of her exhibits, I
7 thought it would be -- this would be an appropriate time to,
8 to note that in that unlikely event that Mr. Kleiner would be
9 able -- And Mr. Kleiner will certainly be subject to cross
10 examine on this, on this exhibit.

11 JUDGE SIPPEL: I, I've just never seen it done this
12 way. The witness that's going to sponsor the testimony, the
13 document, is going to be Emily Barr. And this -- Her first --
14 You know, she would certainly be competent to testify --
15 Mr. Kleiner -- to the documents and that's what she did. But
16 to try and, and bring this in two ways doesn't -- it doesn't
17 seem to add anything.

18 MR. HOWARD: It exposes him to the possibility of
19 cross examination on those documents.

20 JUDGE SIPPEL: I've got an objection, though.
21 Apparently Mrs. Schmeltzer doesn't want to cross examine him
22 on --

23 MS. SCHMELTZER: That's right. I mean, Emily Barr
24 is sponsoring it.

25 MR. ZAUNER: Your Honor, I, I don't think this is

1 duplicative. I think that one point is what you pointed that,
2 and that was what Arnie Kleiner is saying is that at his
3 request Emily Barr did certain things. And all this is
4 pointing out is that she did it at his request. What it is
5 that was done and the documents that she collected are going
6 to come in under the Emily Barr sponsorship. So I think these
7 are two separate points and I don't think it should be
8 stricken. The key, the operative words in that sentence is
9 "at my request."

10 JUDGE SIPPEL: Well, it's true that in a factual --
11 He's testifying as a fact that this is exactly what happened.
12 He requested it and Emily Barr did it. And what she put
13 together was Attachment B. So if you want him to testify to
14 that fact, so be it. I'll overrule the objection, but you may
15 cross examine him on Attachment B.

16 MS. SCHMELTZER: Well, what I'm, I'm concerned about
17 is Mr. Howard's suggestion that Mr. Kleiner's going to come in
18 and reformulate his testimony.

19 JUDGE SIPPEL: No, that's not going to happen.
20 That's what he's saying. My ruling does not imply -- condone
21 that. The witness is testifying to a fact, as to what he
22 actually did. And if he did it, so be it.

23 MS. SCHMELTZER: Okay. Paragraph 23, this is the
24 next page, top of page 9, the first three sentences set up
25 kind of a speculative scenario which is not factual and -- I

1 mean, I realize the first sentence is kind of a, an
2 introductory sentence, but then it goes on to set up this,
3 this speculative scenario in the next two sentences, which I
4 think ought to be stricken.

5 JUDGE SIPPEL: Well, read the sentence that you say
6 is speculative.

7 MS. SCHMELTZER: "As a practical matter, no program
8 could have been broadcast on WMAR-TV during the license term
9 without the approval and financial support of Scripps Howard's
10 corporate office. Even if the program had been planned,
11 produced, and scheduled prior to Scripps Howard's purchase of
12 the station, a negative decision from the company's president
13 could have killed the program."

14 JUDGE SIPPEL: Well, what were you going to say?

15 MR. ZAUNER: I was going to say I think that this
16 paragraph describes the way Scripps Howard operated with
17 regard to its stations. That's all.

18 JUDGE SIPPEL: Well, I'm assuming Mr. Howard's going
19 to say the same thing, and I, I, I, I'm going to overrule the
20 objection. You can ask Mr. Kleiner all the questions you want
21 about that, but I'm going to leave it in. Paragraph 24?

22 MS. SCHMELTZER: Paragraph 24 we believe is
23 duplicative of Ms. Barr's testimony and should be stricken for
24 that reason. In addition, the equipment purchases were
25 approved after the renewal period.

1 JUDGE SIPPEL: Where do you see that, in the
2 Attachment O?

3 MS. SCHMELTZER: I believe that's in the attachment,
4 which I don't have in front of me at the moment.

5 JUDGE SIPPEL: That's, that's a critical point.
6 Mr. Howard, do you know if it's Attachment O?

7 MR. HOWARD: Yes, sir.

8 JUDGE SIPPEL: Inside or --

9 MR. HOWARD: There is a date --

10 JUDGE SIPPEL: -- outside the 3rd?

11 MR. HOWARD: Well, there's a date, sir, on one of
12 the documents that does indicate the final -- on the last page
13 was 10/15/92.

14 JUDGE SIPPEL: Of course, in my -- what was given to
15 me, this is a memo dated July 10, '91, to Joe Bruno? Is that
16 the one we're talking about?

17 MR. HOWARD: There are, there are different
18 materials in -- And that clearly is within the license period.
19 Or the renewal period.

20 MS. SCHMELTZER: The, the second --

21 JUDGE SIPPEL: September the 16th?

22 MS. SCHMELTZER: The first page I don't have any
23 objection. That's within the period. The second page is
24 9/16. The third page is 10/22/91. The fourth page is 9/9.
25 It goes on and most of the dates are in October. Or later in

1 September. And then there's a page that says '92 on it.

2 JUDGE SIPPEL: Well, I see the last page has a stamp
3 on it, October -- looks like October 15th, 19 --

4 MS. SCHMELTZER: Yes, the last -- Let's see, the one
5 that's labeled SH30930 says '92 up at the top. And that
6 appears to be page 2 of 2 pages. So that, that would be the
7 preceding one as well, I guess.

8 JUDGE SIPPEL: Well, this is all going to be subject
9 to Emily Barr's testimony. And this is -- We'll get into all
10 when we get to Emily Barr. You've got an outstanding --
11 You've got an objection raised up -- You've got an objection
12 raised right up front as to Attachment O, but we'll just --
13 we'll, we'll let that stay with his testimony, subject to
14 further objection and motion to strike, unless --

15 MR. HOWARD: No, I think it's best the way it is.

16 JUDGE SIPPEL: All right. Anything else in 24?

17 MS. SCHMELTZER: That -- My objection was to the
18 whole paragraph, actually, because they're talking about what
19 occurred during the renewal period.

20 JUDGE SIPPEL: Well, that gets into issues.

21 MS. SCHMELTZER: Um-hum.

22 JUDGE SIPPEL: Well, if that's what, if that's what
23 he's relying on and -- I mean, I say that, if the Attachment O
24 document is what Mr. Kleiner is relying upon and it turns out
25 that Attachment O doesn't support his testimony, then this

1 paragraph will be, will be stricken later as being irrelevant.

2 MR. HOWARD: Your Honor, his testimony would stand
3 with respect to, to being subject to cross examination without
4 the documentary support. But he certainly can testify from
5 personal knowledge that these equipment purchases in which he
6 participated in were planned to and did assist the station
7 during the renewal period.

8 JUDGE SIPPEL: Well, you mean he's going to get into
9 Attachment O as well?

10 MR. HOWARD: Well, he, he, he can, Your Honor, but
11 his testimony is -- You specified that he would be limited to
12 his testimony about what he did during the renewal period and
13 there is testimony here about these equipment purchases to
14 which he can testify.

15 JUDGE SIPPEL: Let me look at it one more time.
16 Well, I, I don't want to, I don't want to rule that
17 dramatically in advance, but he is saying, he is saying that
18 what happened as far as improvements during the renewal period
19 is evidenced by the memoranda requiring the substantial
20 equipment purchases, and these are in Attachment O. He
21 identifies it as Attachment O. He doesn't say that, you know,
22 in addition to that I personally did this, that, or the other
23 thing.

24 MR. HOWARD: I was referring to the sentence below
25 that where he says these equipment purchases "were planned to

1 and did assist the station in addressing community needs."

2 That was part of his -- he did participate in that plan.

3 JUDGE SIPPEL: Well, that, that -- but that comes
4 after -- that testimony is after the fact. I mean, it's
5 been -- the, the, the significance of that testimony and even
6 its credibility is going to be attached to what, what, what
7 Attachment O is -- whether it comes in, comes out, or what the
8 qualifications ought to be with respect -- Certainly, it's
9 going to impact the testimony.

10 MR. HOWARD: Credibility is certainly affected.

11 JUDGE SIPPEL: All right. Mr. Zauner?

12 MR. ZAUNER: Nothing further.

13 JUDGE SIPPEL: Nothing? Okay. I'm going to -- Then
14 I'm going to permit this testimony to stay in for the -- as it
15 is stated in paragraph 24 subject to further ruling when we
16 get to the Barr testimony. Paragraph 25?

17 MS. SCHMELTZER: The first sentence says "Prior to
18 and during the renewal period, Mr. Janssen and Mr. Schroeder
19 both visited the station on several occasions." And then
20 Mr. Kleiner says he does not recall the specific dates or
21 details. I, I would submit that he knows what the -- what
22 they encouraged him to do. I would submit that these two
23 sentences are conclusory and should be stricken. Then the,
24 the rest of the paragraph references Exhibit E -- Attachment E
25 to Terry Schroeder's testimony, and that's been stricken.

1 JUDGE SIPPEL: Well --

2 MS. SCHMELTZER: Because it was -- Attachment E was
3 dated September 13, '91.

4 JUDGE SIPPEL: Which gets it outside the renewal
5 period.

6 MS. SCHMELTZER: Right.

7 JUDGE SIPPEL: Well, what's your first -- Your first
8 -- First of all I guess is whether or not to strike Attachment
9 E for purposes of Kleiner's testimony as well.

10 MS. SCHMELTZER: Right.

11 JUDGE SIPPEL: And because of the date, because of
12 the date, I'm going to strike that.

13 MS. SCHMELTZER: That begins with "A memo from Ken
14 Lowe addressing," it's the whole -- it's that whole remainder
15 of paragraph 25, all the way to the bottom. That all talks
16 about Attachment E. My concern is that that seems to be the
17 predicate for the first two sentences, which are conclusory.
18 So what we're talking about here really --

19 JUDGE SIPPEL: Well, you can cross examine him on
20 that.

21 MS. SCHMELTZER: Okay.

22 JUDGE SIPPEL: If he's got some other source other
23 than Attachment E and, you know, can testify to that. I mean
24 if you want to cross examine him on that. Otherwise, you can
25 just leave -- the way it is. But Attachment E is outside the,

1 is outside the renewal, the renewal term.

2 MS. SCHMELTZER: So are we striking "A memo from Ken
3 Lowe addressing," and then the rest of that --

4 JUDGE SIPPEL: The rest of it stays.

5 MS. SCHMELTZER: I'm sorry, the rest of it goes?

6 JUDGE SIPPEL: No, the rest of it stays. I'm saying
7 if that's the way -- that's -- if that's -- You can cross
8 examine him.

9 MS. SCHMELTZER: The first two sentences stay. Is
10 that right?

11 JUDGE SIPPEL: Well, that is -- Unless you've got
12 some other insights to offer, Mr. Howard, that sentence, "A
13 memorandum from Ken Lowe," is tied directly into Attachment E.

14 MR. HOWARD: Yes.

15 JUDGE SIPPEL: Which goes out. So I'm going to take
16 that sentence out, too, starting with "A memorandum from Ken
17 Lowe."

18 MR. HOWARD: Through the end of the paragraph?

19 JUDGE SIPPEL: Through the end of that paragraph,
20 that's correct, yes, sir. Twenty-six?

21 MS. SCHMELTZER: Okay. In the first sentence, I
22 would just object to the word "regular" as conclusory.

23 JUDGE SIPPEL: I'll let you cross examine on that.
24 I'm going to leave that the way it is. Any other things in
25 26? What is Attachment F?

1 MS. SCHMELTZER: Well, that's what I'm --

2 JUDGE SIPPEL: Let's go off the record.

3 (Off the record.)

4 JUDGE SIPPEL: We're back on the record, yes, we
5 are.

6 MS. SCHMELTZER: Paragraph 26, my only other
7 objection in that paragraph is to the last sentence.

8 JUDGE SIPPEL: Attachment F is okay then?

9 MS. SCHMELTZER: Yes, that's --

10 JUDGE SIPPEL: That's in the relevant period?

11 MS. SCHMELTZER: Right. "Richard Janssen instructed
12 me to join the Baltimore Broadcasters Coalition, which
13 conducts joint ascertainment efforts, and the station did so
14 during the renewal period." There was testimony at the
15 depositions that the meeting with the Baltimore Broadcasters
16 Coalition, which they ultimately joined, was not held until
17 November 1991. It was after the renewal period and no one
18 knew when they joined, but there's definitely no evidence that
19 they joined during the renewal period.

20 JUDGE SIPPEL: Well, you can bring that out on
21 cross. Have you got his deposition transcript?

22 MS. SCHMELTZER: Yeah.

23 JUDGE SIPPEL: All right. You can do it then. Do
24 you want to withdraw his testimony, Mr. Howard?

25 MR. HOWARD: No. The testimony is accurate,

1 Your Honor.

2 JUDGE SIPPEL: All right.

3 MR. HOWARD: There's nothing in the deposition that
4 contradicts it.

5 MS. SCHMELTZER: Well, if there's some documentary
6 evidence --

7 MR. HOWARD: We don't need documentary evidence for
8 him to testify as to his recollection.

9 JUDGE SIPPEL: Well, you don't have to get any
10 further than you've gotten. I'm not going to rule on this
11 now. I'm letting the testimony in place stand the way it is.
12 You're going to have the right to cross examine, Ms.
13 Schmeltzer, and, you know, you also have a right to cross
14 examine with the deposition. The next subject is the station
15 operation during the license term, and before we -- I want to
16 just shift gears very briefly here on some logistical things.
17 And let me, let me just go off the record for just a minute.

18 (Off the record.)

19 JUDGE SIPPEL: I just instructed in an off-the-
20 record session that we're going to turn -- we're going to
21 defer further rulings on the Kleiner testimony so that we can
22 focus on the Attachment, Attachment N to the Barr testimony,
23 which again ties into some mechanical equipment, the TV
24 viewing screen that's here in the courtroom. This is all for
25 logistical reasons that we're taking this a little out of

1 turn.

2 MS. SCHMELTZER: I believe it's M and N. Is that
3 right?

4 MR. ROBERTS: N is the transcript itself.

5 MS. SCHMELTZER: Right, right.

6 JUDGE SIPPEL: Well, let's -- This is -- This has
7 not been marked for identification and, as a preliminary
8 matter, I, I'm, I'm going to go forward without it being
9 marked, unless there is any objection. If we actually get to
10 the point of putting this in the record, then we'll have them
11 marked exhibits. But I'm trying -- Again, I'm trying to speed
12 this along. Who is going to make a proffer as to what's
13 involved here? Will that be you, Mr. Roberts?

14 MR. ROBERTS: No, I'm just --

15 UNIDENTIFIED SPEAKER: He's here to do the lifting.

16 JUDGE SIPPEL: Oh. Before anybody does that, I
17 don't want any unnecessary hernias, let me -- explain to me,
18 somebody make a proffer to me again, maybe Mr. Howard, and
19 tell me exactly what it is that you intend to do.

20 MR. HOWARD: Well, this is described on page 52 of
21 Emily Barr's testimony, where she explains that it's a
22 compilation of excerpts of the programming that was offered in
23 support of Scripps Howard's renewal expectancy. And it was
24 offered on the grounds that it's certainly not duplicative of
25 written documents because it describes for the Commission the

1 programming in a way that's not possible through, through
2 writing. And, thus, it should be admissible as a
3 demonstrative evidence -- samples of the station's
4 programming. It is a summary of the programming on which
5 Scripps Howard relies -- selection. But all the, the other
6 tapes were made available to the, the other parties and they
7 could review them and, and, and present any other parts of
8 those tapes that they chose.

9 JUDGE SIPPEL: Well, let me, let me just start with
10 what, what we're dealing with here. At page 52, the first
11 thing that Mrs. Barr refers to is Attachment M, M like in
12 Maryland, and that's a very short description of -- What is it
13 a short description of?

14 MR. HOWARD: Oh, of what tapes are retained in the
15 ordinary course of business. Would you like me to elaborate?

16 JUDGE SIPPEL: I'm not sure what the purpose of the
17 Attachment M is. It's not a list of tapes, it's not a --

18 MR. HOWARD: It is --

19 JUDGE SIPPEL: It's not an inventory.

20 MR. HOWARD: It is the tape. It's a video tape.

21 JUDGE SIPPEL: Attachment -- I see. So this piece
22 of paper that's in behind Attachment M has really got nothing
23 to do with this case at all except to refer to the tape?

24 MR. HOWARD: Right.

25 JUDGE SIPPEL: Okay, thank you. Thank you. You can

1 | see how elementary my question -- Then we turn to Attachment
2 | N, as in Nevada. Now, is this Attachment N a, a literal
3 | transmission of what is actually on the tape?

4 | MR. HOWARD: Yes, Your Honor.

5 | JUDGE SIPPEL: Verbatim, word for word?

6 | MR. HOWARD: Yes, Your Honor.

7 | JUDGE SIPPEL: Well, the tape does not contain any
8 | language other than what's here, correct?

9 | MR. HOWARD: Correct.

10 | JUDGE SIPPEL: All right. Now, why is it then that
11 | you wanted me to look at a tape and have two tapes follow this
12 | case around to whatever part of the Commission it's going to
13 | get put in?

14 | MR. HOWARD: For the purpose that I think it's a
15 | well known statement, Your Honor, that a picture is worth a
16 | thousand words, and this is a visual medium that's being
17 | evaluated as to how well it served the community. And some
18 | limited introduction of evidence in the visual format is a
19 | valuable addition to the record.

20 | JUDGE SIPPEL: You mean if there was -- if I were
21 | looking -- If, if, if -- You're, you're asking me to assess
22 | whether or not I think that this is good TV presentation?

23 | MR. HOWARD: No, Your Honor. It's simply a matter
24 | of having the Commission be exposed to the programming as it
25 | was presented to the community in Baltimore. The technology

1 is available to permit us to offer a more direct example of
2 the programming that was offered. It's the programming that
3 is to be judged here and if we can present some of that
4 programming in the, the, in the exact form, then I don't see
5 what ground there is for excluding that.

6 JUDGE SIPPEL: Well, it certainly is going to --
7 it's going to make the, it's going to make the record
8 considerably larger and more difficult to manage in terms of
9 the way we usually hand the record. That's point number one.
10 But point number two is that again it gets into this -- a
11 presentation of a visual presentation which can bring into
12 focus or have other observing skills with just, just the plain
13 black letter statements that are made. I mean, the statements
14 that are made are the critical things that have to be related
15 to the issue.

16 If you have the issues and you have the statements
17 in terms of the presentation, unless there was some issue in
18 the case that you are, you are technically unable or
19 inartfully transmitting this to the public, then there would
20 be a basis for me and the fact-finders to be able to look at.
21 I mean, there'd be a reason for me to look at it. But there's
22 -- Nobody's complaining about the quality of the transmission.

23 MR. HOWARD: Not the technical quality.

24 JUDGE SIPPEL: That's what I'm talking.

25 MR. HOWARD: And I don't think this would, would

1 really demonstrate that as well. It was a tape made in the
2 studio and retained by the, by the station, not, not -- This
3 isn't as it was broadcast. But the, the, the -- There is a
4 difference, for example -- Again, let me, let me go to my ex-
5 amples. That there's a -- in terms of offering programming
6 that serves the, the public interest, the -- their transcript
7 of that programming, for example, could be very unrevealing as
8 to the value of that programming to the community, unless it's

9 This is just intended to show a sample of how the,
10 the station WMAR offered programming that was tempered into
11 it, used their capabilities as a station to present
12 programming to serve the community needs and interests. And
13 that does not come through in the same manner or to the same
14 degree as it does simply from a reading of a dry description
15 of the issues that we're presenting.

16 JUDGE SIPPEL: Well, that's an, that's an
17 interesting observation and it's -- I, I -- There may be some
18 validity to that. It wouldn't come, it wouldn't come through
19 to the viewer in saying -- Well, I shouldn't say the viewer,
20 but the recipient of the message is going to receive it
21 through a different medium if he's looking at it and listening
22 to it rather than just looking at it. That's what I -- That
23 is a refinement that, that is just not part of the, of the
24 standards, when you say the standards, or the quality that's
25 required in these cases. It's just not there.

1 I mean, the want just isn't there that, that makes
2 that a relevant presentation. And I've got this, I've got
3 this 403 concern in addition to the practical logistics that
4 has me very bothered about this. But -- And I don't mean that
5 in a critical sense. I mean, it comes from the rules.

6 MR. HOWARD: I can only argue that the burden is --
7 Your Honor. That the, the state of technology is changing and
8 that at some point the, the Commission perhaps is, in the not
9 too distant future, going to be -- compact discs that can be
10 created that would fit more easily in the record. But we're --
11 At some point, there's no reason the Commission could not --
12 should not accept relevant information except, as you say, if
13 it would unduly burden the, the record, and I don't think that
14 -- I would urge that this does not unduly burden the record.

15 JUDGE SIPPEL: But the relevance that you're
16 pursuing here is not the relevance of, of, of the, of the
17 message. The message is in the written text that you've
18 provided us. The relevance that you're saying that I'm, I'm,
19 I'm omitting or that I'm, I'm not prepared to receive is, is
20 seeing that language presented in a different format.

21 MR. HOWARD: That gives you a better basis on which
22 to judge the, the programming. As I think the Commission said
23 on many occasions, when renewal expectancy -- programming
24 that's at issue, and this gives you some sampling of the
25 programming that can't be received in any other way.

1 JUDGE SIPPEL: It's -- It can't be received in any
2 other way. It would, it would almost -- Well, I was going to
3 say there was a consumer protection case, something --
4 advertisement, it would almost seem that you'd have to be --
5 in light of that theory. I, I don't -- I'm, I'm just trying
6 to --

7 MS. SCHMELTZER: Can I address this?

8 JUDGE SIPPEL: Do you want to address this?

9 MS. SCHMELTZER: Yes. Mr. Howard said the
10 programming was in the exact form and he wanted to expose the
11 FCC to the programming as aired. Well, that's not what this
12 tape contains. This tape contains clips that Emily Barr then
13 talks over, so we have the audio over the program. It's
14 basically a show piece that Scripps Howard has put together,
15 kind of like a promo, so to speak. It's very hard to cross
16 examine something like that. The clips themselves are not long
17 enough to really understand what was going on on the program.

18 In fact, most of this program is kind of rhetoric.
19 And all of the material that's contained in the transcript is
20 contained elsewhere in various exhibits, so that all of this
21 is duplicative, in addition to which some of this material
22 concerns period that's -- a time frame that's outside of the
23 renewal period, that's after September the 3rd. So for a
24 variety of reasons, we just don't think that this tape should
25 come into the evidence. And I can certainly go through the

1 transcript line by line, if necessary, to tell you where
2 that's elsewhere in the exhibits. But this whole exercise
3 really is not necessary.

4 JUDGE SIPPEL: Mr. Zauner?

5 MR. ZAUNER: Yeah, the Bureau agrees with your
6 earlier observations. The Commission, as far as I know, is
7 not in the business of evaluating the quality of programming
8 offered in terms of renewal expectancy. Nor are we in the
9 business of evaluating the value of the programming to the
10 community, except insofar as it's shown to relate to the
11 ascertaining needs. I think that the tape is irrelevant and
12 any information that's on the tape is easily put into the --
13 into written form if they want to show what they did or, or
14 how much money they're spending on programming. That's --
15 That can be put into writing and there's no need for a tape to
16 be included in this proceeding.

17 Also, I believe -- I don't have with me the
18 Commission's rules, but I believe there is a Commission rule
19 that says that where there is recorded information, that
20 recorded information should be reduced to, to a written form
21 and submitted as an exhibit. So I think we're also --

22 JUDGE SIPPEL: Well, yeah, we talked about that rule
23 at one of our prehearings, but that doesn't -- it doesn't say
24 -- that rule doesn't go on to say and the video tapes will be
25 excluded. It doesn't say that, it doesn't say that you can't